



June 26, 2020

**VIA ECF**

The Honorable Alison J. Nathan  
United States District Judge  
United States District Court  
40 Foley Square  
New York, NY 10007

Re: *United States v. Michael Goliszeski*, 19-cr-00889-AJN

Dear Judge Nathan:

On behalf of defendant Michael Goliszeski, I write to briefly reply to the Government's sentencing submission dated June 22, 2020.

**1. Mr. Goliszeski has taken responsibility for his misconduct**

First, we write to address the Government's contention that Mr. Goliszeski has painted an inaccurate picture about the timing and extent of Mr. Goliszeski's acceptance of responsibility.

The Government contends that, in a recorded interview on November 14, 2018 “[w]hen first confronted by investigators hired by Rexton and New York City Police Department (NYPD) detectives, Goliszeski lied and failed to accept responsibility for his fraud” and “denied any improprieties.” But when Mr. Goliszeski was first confronted by his employer, he was not even aware that investigators and an NYPD detective were interviewing him. Instead, the NYPD detective and the investigators led Mr. Goliszeski to believe that they were simply auditors seeking to interview Mr. Goliszeski about the billing process. Mr. Goliszeski did not know that law enforcement was investigating him until months later. During the recorded interview, Mr. Goliszeski acknowledged to the “auditors” that he owned companies to which work from Rexton was sent, that he had never disclosed this to senior management, that it was unethical, and that he would understand if he was fired. While he minimized his relationship with the bookkeeper to protect her, he acknowledged that they were very good friends who had purchased real estate together. At no time during that interview was he aware that law enforcement was investigating him, and indeed he did not learn that an NYPD detective was involved in the meeting until the Government filed its sentencing submission.

The Government also contends that Mr. Goliszeski did not accept responsibility in the civil litigation until the U.S. Attorney became involved in the case, *see* Gov. Opp. at 5, but that is inconsistent with the timeline of the civil litigation. On November 14, 2018, both Mr. Goliszeski and the bookkeeper were served with the civil lawsuit. Mr. Goliszeski shortly thereafter retained our firm, Gelber & Santillo PLLC, as civil litigation counsel. At the outset, Mr. Goliszeski was crystal clear that he did not want to fight the case and he just wanted to make amends and return the money. This firm, as Mr. Goliszeski's civil counsel, reached out to Rexton shortly thereafter

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to discuss settlement, and the parties held an in person settlement meeting as early as December 12, 2018. As early as February 2019, acting as Mr. Goliszeski's civil attorneys, our firm made clear to Rexton that Mr. Goliszeski was willing to pay back the full value of the money he understood to be at issue. It was only when a settlement could not be finalized in time for a court deadline that our firm filed a motion to dismiss as part of the routine course of a civil litigation based on the sufficiency of the pleadings. Mr. Goliszeski thus made earnest efforts to pay back Rexton months before he filed a motion to dismiss and months before he became aware of the U.S. Attorney's involvement in the case in July 2019.

As noted in the defense opening submission, Mr. Goliszeski acknowledges that over the course of several years, he steered work to his own company from his employers unbeknownst to them, submitted fraudulent invoices and overbilled. He also acknowledges, as the Government contends, that this was driven by misguided greed. He shouldn't have done it all, and he shouldn't have done it for years. Mr. Goliszeski has been grappling with this in regular therapy sessions, and has written that: "I know now that, while before I had things that I wanted, all I need is my family and friends, an honest, humble job, and a modest place to live. I will never again make the mistake of doing anything dishonest to get more than I need." Ex. C-2. While Mr. Goliszeski cannot change his past conduct, since November 14, 2018 he has made a heartfelt and sustained commitment to make amends, and to closely examine the source of his misconduct and make sure that it never happens again. He has taken responsibility.

## **2. Mr. Goliszeski and His Family Suffered Financially As a Result of the Settlement**

The Government also suggests that Mr. Goliszeski did not suffer financially to pay back Rexton because the bookkeeper paid the majority of the settlement and Mr. Goliszeski continues to have substantial assets. Mr. Goliszeski and the bookkeeper have lived together for 15 years and plan to spent the rest of their lives together. They have jointly sold their assets, including Mr. Goliszeski's home of 15 years, to pay back Rexton. Together, they have downsized to a rental apartment. While Mr. Goliszeski had fewer individual personal assets to contribute, his family as a whole has suffered a substantial financial hardship as a result of the settlement.

Additionally, the Government cites to the Presentence Report to note that Mr. Goliszeski continues to have substantial assets. But the PSR was dated several months ago, and does not reflect Mr. Goliszeski's current assets. Mr. Goliszeski has taken \$137,426.23 for the payment of restitution at sentencing, and has had to take substantial withdrawals to pay the taxes from his earlier withdrawals to pay back Rexton and legal fees. His current IRA balance is substantially less now, will be subject to taxation at withdrawal, and has to last for the rest of his life.

Finally, defendants routinely make payments toward restitution obligations over time, so it is not insignificant that Mr. Goliszeski instead liquidated his assets upfront to make payment.

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**3. At 69 years old, Mr. Goliszeksi Would Be In Grave Danger If He Is Incarcerated**

Finally, the Government argues that a non-custodial sentence is not warranted in Mr. Goliszeski's case due to the COVID-19 pandemic simply because Mr. Goliszeski is non-violent and 69 years old. *See* Gov. Opp. at 7. But defense counsel does not argue that every non-violent offender age 65 and over should be categorically excluded from a custodial sentence, only that, given the unprecedented pandemic and the other 3553 factors in Mr. Goliszeski's case, a non-custodial sentence is warranted here. Mr. Goliszeski is a first time, non-violent offender. He has otherwise lived a law-abiding and productive life, working hard and helping family members and friends at every turn. He has suffered from acute anxiety and depression, and he has participated in sustained therapy to reckon with his wrongdoing. By sentencing, he will also have made full restitution to his employer. Under the facts of Mr. Goliszeski's case, a custodial sentence that exposes him to the heightened risk of death would be grossly disproportionate.

The Government's argument also minimizes the gravity of the risks to the elderly from exposure to COVID-19 at the Bureau of Prisons. Of the 84 inmates who have died from COVID-19 in BOP custody, approximately 90% of them have been age 50 years and older, and approximately 54% of them have been age 60 and older. See Exhibit D, Chart of BOP Deaths by Age.<sup>1</sup> This is significant given that inmates 51 years and older only comprise approximately 20% of the BOP population and individuals 61 years and older only comprise 6% of the BOP population. *See* [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp) (last accessed June 25, 2020). In addition, it is clear even from the little information provided in the press releases that some of the inmates exposed to COVID-19 were never transported to a hospital for life-saving treatment, but merely were placed in isolation after testing positive for COVID-19 and died in their cells. *See, e.g.*, Exhibit E, May 29, 2020 BOP Press Release Regarding Yusuf Death (noting that Mr. Yusuf tested positive for COVID-19 on May 7, was placed in isolation, and "was found unresponsive" in his cell and subsequently pronounced dead). These reports demonstrate the life-threatening risks to Mr. Goliszeski if he is given a custodial sentence.

For these reasons and the reasons set forth in our opening submission, we respectfully submit that a non-custodial sentence would be sufficient but not greater than necessary to serve the goals of sentencing.

Thank you for your consideration.

Respectfully submitted,

/s/ Kristen M. Santillo  
 Kristen M. Santillo

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<sup>1</sup> Note that this information was compiled from a review of the BOP Press Releases regarding each individual's death and does not take into account deaths at residential reentry centers or private facilities. *See* [https://www.bop.gov/resources/press\\_releases.jsp](https://www.bop.gov/resources/press_releases.jsp).

# EXHIBIT D

BOP Facility	Name of Inmate	Date of BOP Press Release	Age of Inmate
FCI Butner	John Marrone	6/14/20	85
FCI Butner	Dongfan Greg Chung	5/28/20	84
FCI Butner	Charles Richard Rootes	4/12/20	81
FCI Terminal Island	Michael McDonald	6/22/20	80
FCI Terminal Island	Rex Damon Begay, Sr.,	4/29/20	80
FCI Butner	Steve Arthur Robinette	5/31/20	79
FMC Fort Worth	Thomas Rogers	5/12/20	79
FMC Fort Worth	Oscar Ortiz	4/24/20	78
FCI Butner	Andre Williams	4/13/20	78
FCI Butner	John A. Brust	6/6/20	77
FMC Devens	Darrel Underhill	5/4/20	76
FCI Oakdale	George Jeffus	4/10/20	76
FCI Elkton	Frank McCoy	4/4/20	76
FMC Fort Worth	Robert Hoffman	6/11/20	75
USP Lompoc	Jimmie Lee Houston	5/6/20	75
FCI Butner	Bobby Lee Medford	6/3/20	74
FCI Butner	Juan Ledoux-Moreno	6/2/20	74
FMC Fort Worth	Charles Hanberry	5/15/20	74
FCI Butner	Eric Spiwak	5/25/20	73
FCI Terminal Island	Leonard Auerbach	4/30/20	73
FCI Butner	William Walker Minto	4/28/20	73
FCI Terminal Island	Bradley James Ghilarducci	4/15/20	73
FCI Elkton	David Ehle	4/14/20	71
FCI Terminal Island	Scott Douglas Cutting, Sr.	5/9/20	70
FCI Elkton	James Druggan	5/6/20	70
FMC Lexington	Charles Woolsey	6/10/20	69
FCI Oakdale	George Escamilla	5/9/20	67
FCI Butner	Fabian Tinsley	4/17/20	67
FCI Butner	Norman F. Grimm, Jr.	6/25/20	66
FMC Lexington	Richard Saettel	5/15/20	66
USP Lompoc	Oliver M. Boling	4/17/20	66
FCI Oakdale	David Townsend	4/2/20	66
FCI Terminal Island	James Lino	5/13/20	65
FMC Fort Worth	Donnie Grabener	4/25/20	65
FCI Elkton	Margarito Garcia-Fragoso	4/3/20	65
FCI Butner	David Grant	5/31/20	63
FCI Butner	Bernardo Luis Olarta-Loaiza	5/29/20	63
FMC Fort Worth	Joseph Young	5/19/20	63
FMC Devens	Robert Herndon	6/3/20	62
FMC Lexington	Fidel Torres	5/21/20	62
FCI Elkton	William Hutsell	4/16/20	62
FCI Butner	Mark E. Hebert	6/14/20	61
FMC Fort Worth	Arnoldo Almeida	4/22/20	61
FMC Lexington	Calderon Mendoza, Carlos	5/15/20	60

FCI Butner	Jerry Lynn Dempsey	5/15/20	59
FMC Lexington	Juan Mata	5/11/20	59
FMC Fort Worth	Kevin Ivy	5/3/20	59
FCI Terminal Island	Michael Fleming	4/19/20	59
FCI Danbury	Anthony David Gentile	4/18/20	59
FCI Butner	William E. Miller	5/7/20	58
FCI Terminal Island	Eduardo Robles-Holguin	5/4/20	58
USP Yazoo City	Randy Bise	5/6/20	57
FCI Butner	Gary Edward Nixon	4/13/20	57
FCI Oakdale	James Wilson	4/2/20	57
FCI Butner	Andrew Charles Markovci	6/4/20	56
FCI Lompoc	Daniel Lee Vadnais	6/1/20	56
USP Terre Haute	Gregory Phinton Glenn	5/26/20	56
FMC Fort Worth	Vernon Adderley	5/12/20	56
FMC Fort Worth	Guadalupe Ramos	5/10/20	56
FCI Elkton	Michael Brookwalter	5/8/20	56
FTC Oklahoma City	Douglas Allen Reid	5/2/20	56
FCI Oakdale	Wallace Holley, Jr	4/3/20	56
FCI Butner	Joe Tapia, III	6/24/20	55
FCI Butner	Wayne Delvin Littlecrow	6/20/20	55
FCI Elkton	Richard Nesby	4/26/20	55
FCI Oakdale	Michael Lilley	4/15/20	55
FCI Terminal Island	Adrian Solarzano	5/27/20	54
FCI Terminal Island	Stephen Cino	4/30/20	54
FCI Milan	Daniel Kimbrough	4/27/20	53
FCI Elkton	Woodrow Taylor	4/2/20	53
FCI Butner	Isaac Lamar Byers	5/26/20	52
FCI Milan	Willie Peterson	5/1/20	51
FCI Yazoo City	Emanuel Brewster Jr.	6/5/20	50
FMC Fort Worth	Bich Tran	5/18/20	50
FCI Oakdale	Patrick Jones	3/28/20	49
FMC Lexington	Stephen Cook	6/4/20	48
FCI Butner	John Doe	4/13/20	46
FCI Yazoo City	Dewayne Antonio Mitchell	6/11/20	43
FCI Milan	John Ng	4/24/20	43
FCI Elkton	Alvin Turner	4/13/20	43
FCI Oakdale	Nicholas Rodriguez	4/1/20	43
FCI Lompoc	Mohamed Yusuf	5/29/20	37
FMC Carswell	Andrea Circle Bear	4/28/20	30

# EXHIBIT E



**U.S. Department of Justice  
Federal Bureau of Prisons**

**FOR IMMEDIATE RELEASE**

May 29, 2020

Contact: Office of Public Affairs  
202-514-6551

**Inmate Death at FCI Lompoc**

WASHINGTON, D.C.: On Monday, May 25, 2020, at approximately 1:00 p.m., Mohamed Yusuf was found unresponsive at the Federal Correctional Institution (FCI) in Lompoc, California. Responding staff immediately initiated life-saving measures. Staff requested emergency medical services (EMS) and life-saving efforts continued; however, Mr. Yusuf was subsequently pronounced dead by EMS personnel. Mr. Yusuf tested positive for COVID-19 on May 7, 2020, and was placed in isolation in accordance with Centers for Disease Control and Prevention guidance.

Mr. Yusuf was a 37-year-old male who was sentenced in the Eastern District of New York to a 132-month sentence for Conspiracy to Provide Material Support to a Foreign Terrorist Organization. He had been in custody at the Federal Correctional Complex Lompoc since May 24, 2018.

FCI Lompoc is a low security facility that currently houses 949 male offenders in Lompoc, California.

The Bureau of Prisons will continue to provide daily updates and information on actions related to COVID-19 at [www.bop.gov/coronavirus/index.jsp](http://www.bop.gov/coronavirus/index.jsp).

Additional information about the Bureau of Prisons can be found at [www.bop.gov](http://www.bop.gov).

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